

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

THE BALMER FUND, INC. a Kansas  
not-for-profit corporation, and  
ROSALEA HOSTETLER,

Plaintiffs,

v.

Case No. 17-1046-EFM

CITY OF HARPER, KANSAS,

Defendant.

**ORDER**

The defendant, City of Harper, Kansas, has filed a motion to stay discovery (ECF No. 24) pending the resolution of its motion for summary judgment (ECF No. 20). As discussed below, the motion to stay is denied.

The decision whether to stay discovery rests in the sound discretion of the court.<sup>1</sup> The Tenth Circuit has stated, however, that “the right to proceeding in court should not be denied except under the most extreme circumstances.”<sup>2</sup> Thus, as a general rule, discovery is not stayed in this district based merely on the pendency of dispositive motions.<sup>3</sup> The court has recognized that there may be exceptions to this rule, such as

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<sup>1</sup> *Kutilek v. Gannon*, 132 F.R.D. 296, 297–98 (D. Kan. 1990); *Tennant v. Miller*, No. 13-2143, 2013 WL 4848836, at \*1 (D. Kan. Sept. 11, 2013).

<sup>2</sup> *Holroyd v. Dept. of Veterans Affairs*, No. 06-4133, 2007 WL 1585846, at \*1 (D. Kan. June 1, 2007) (quoting *Commodity Futures Trading Comm’n v. Chilcott Portfolio Mgmt., Inc.*, 713 F.2d 1477, 1484 (10th Cir. 1983)).

<sup>3</sup> *Kutilek*, 132 F.R.D. at 297 (“The general policy in this district is not to stay discovery even though dispositive motions are pending.” (citing cases)); *Garrett’s*

where: (1) the case is likely to be finally concluded via a dispositive motion; (2) the facts sought through discovery would not affect the resolution of the dispositive motion; or (3) discovery on all issues posed by the complaint would be wasteful and burdensome.<sup>4</sup>

Defendant's motion to stay references the above-noted exceptions to the general rule disfavoring the stay of discovery, but makes no serious attempt to analyze them in the context of this case. Accordingly, defendant's motion to stay is denied.

IT IS SO ORDERED.

Dated July 11, 2017, at Kansas City, Kansas.

s/ James P. O'Hara  
James P. O'Hara  
U. S. Magistrate Judge

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*Worldwide Enters., LLC v. United States*, No. 14-2281, 2014 WL 7071713, at \*1 (D. Kan. Dec. 12, 2014) (“[T]he general policy of this district is to proceed with discovery despite pending dispositive motions.”).

<sup>4</sup> See *Citizens for Objective Public Educ., Inc. v. Kan. State Bd. of Educ.*, No. 13-4119, 2013 WL 6728323, at \*1 (D. Kan. Dec. 19, 2013) (citing *Kutilek*, 132 F.R.D. at 297–98).